

WILLIAM T. CRINER

IBLA 75-159

Decided March 13, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting headquarters site application A-059756.

Affirmed.

1. Alaska: Headquarters Sites

If an applicant for a headquarters site does not make the showings required by the regulations and establish his entitlement to purchase under the Act of March 3, 1927, 44 Stat. 1364, 43 U.S.C. § 687a (1970), his application may be rejected and his claim canceled without a hearing.

APPEARANCES: Denis R. Lazarus, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William T. Criner has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 11, 1974, rejecting his application to purchase headquarters site A-059756. The BLM rejected the application because it did not show that Criner had substantially complied with the headquarters site law, because Criner did not file an application to purchase within the time required by 43 CFR 2562.3(c), and because Criner's amendment of his original trade and manufacturing site purchase application to an application for the purchase of a headquarters site did not comply with 43 CFR 1821.6-2. Criner contends that he has complied with both the procedural and substantive requirements of the headquarters site law and that BLM's decision should be reversed.

FACTS

On August 14, 1963, Criner filed a notice of location for a 12.50-acre trade and manufacturing site in T. 30 N., R. 3 E.,

Seward Meridian, Alaska. On July 31, 1968, he sent a letter to BLM which said that he had complied with all requirements and that BLM could inspect and survey his trade and manufacturing site. Approximately one month later, BLM sent Criner a copy of the regulations on trade and manufacturing sites and informed him that he should file a purchase application and that the statutory life of the claim had expired on August 13, 1968.

On October 24, 1968, BLM again sent Criner a copy of the trade and manufacturing site regulations and informed him:

The statutory life of your claim expired August 13, 1968. Accordingly, a period of 30 days from the receipt of this letter is allowed within which to submit an application to purchase. Failure to comply must result in closure of the case file. The reasons for failure to submit application to purchase during the statutory life of the claim should accompany your purchase application.

Within the 30-day period, Criner sent in his application to purchase. The application listed \$4,000 worth of improvements including a 12 by 22 foot cabin, a 3 by 24 foot dock, an 8 by 8 foot dockhouse, a 10 by 12 foot tent house and a 4 by 4 foot outhouse. In the application, Criner alleged that he used the site as a fishing and hunting headquarters.

Thereafter, BLM issued an order for Criner to show cause why his purchase application should not be canceled. The show cause order presented Criner with the alternative of submitting additional evidence that he was conducting a trade or business on the land described in the application or amending his application to one for five acres under the Headquarters Site Act of March 3, 1927, 44 Stat. 1364, 43 U.S.C. § 687a (1970). On February 10, 1969, Criner requested that his application be amended to an application for a five-acre headquarters site. <sup>1/</sup>

Criner has submitted letters from five people to support his assertion of use of the site. Only one of the letters unambiguously

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<sup>1/</sup> BLM stated that the amendment did not comply with 43 CFR 1821.6-2. That section, however, applies only to the amendment of patents and entries to correct errors pertaining to the descriptions of the land to be entered. Criner's application should not have been rejected for failure to comply with that regulation. But see the discussion, infra, regarding his failure to comply with the headquarter's site regulations.

states that the author rented Criner's cabin.

During each of the summers of 1964, 65, 67, I rented Mr. Wm. Criner's cabin located on Lake Stepan for a period of three to seven days in order to sports fish. In the fall of 1965 I rented it for a period of 10 days for hunting.

Three of the letters say the cabin was "used." One of these three letters thanks Criner for his "generosity" in letting him use the cabin. All three of the letters imply use on a non-rental basis. The fifth letter confirms the existence of the improvements.

#### STATEMENT OF THE LAW

The Headquarters Site Act of March 3, 1927, 43 U.S.C. § 687a (1970), authorizes a citizen of the United States who is himself, or whose employer is engaged in trade, manufacture, or other productive industry in Alaska, to purchase one claim, not exceeding five acres, of unreserved public land as a homestead or headquarters under rules and regulations prescribed by the Secretary of the Interior.

In order to initiate a headquarters site claim, the prospective purchaser must file either a notice of location or application to purchase. 43 U.S.C. § 687a-1; 43 CFR 2563.1(a). If a notice of location is initially filed, the application to purchase the claim, together with proof of use and occupancy of the claim must be filed within five years from the date of filing of the notice of location. 43 U.S.C. § 687a-1; 43 CFR 2563.1-1(c). Departmental regulation 43 CFR 2563.1-1(a) requires applications to purchase under the 1927 Act be signed by the applicant and corroborated by the statements of two persons and show, among other information, the following:

- (1) The age and citizenship of applicant.
- (2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.
- (3) The date when the land was first occupied as a homestead or headquarters.
- (4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

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[1] If an applicant for a headquarters site does not make the showings required by the regulations and establish his entitlement to purchase under the Act, his application may be rejected and his claim canceled without a hearing. Vernon L. Nash, 17 IBLA 332, 336 (1974); Kathleen M. Smyth, 8 IBLA 425, 427 (1972). The applicant has the burden to make the showings required by BLM to establish his entitlement, including supportive data to show the nature of his or his employer's business and the use of the claim in relation thereto. Id.; Lynn E. Erickson, 10 IBLA 11, 16-17, 80 I.D. 215, 217-18 (1973).

### CONCLUSIONS

To amend his trade and manufacturing site application to a headquarter's site purchase application, appellant should have complied with all of the requirements of the regulations pertaining to headquarters sites. Even assuming arguendo, a new separate application was not required and that the late filing could be excused (which we do not imply or decide), appellant has failed to meet the substantive requirements for a headquarters site because he has made no showing whatsoever of the information required by paragraphs (4) and (5) of the regulation quoted above, and has provided inadequate information regarding paragraph (2).

Appellant has made no assertion that he is applying as an employee, and has not shown the nature of the business of his employer, (see Willis Hight Morris, 63 I.D. 117 (1956)), nor has he shown his own trade, manufacture, or other productive industry, and the relationship of the site to such a business. In his trade and manufacturing site application appellant indicated that he used the site as a fishing and hunting headquarters, but gave no further information which would establish that he is a commercial fisherman or hunter or is engaged in some other business for which the site is a headquarters or a homestead. At the very most, appellant shows that some people have used his cabin and other improvements to fish. There is no indication that he was employed as a guide, an outfitter, or in any other capacity by these people. Only one person asserted he rented the cabin from Criner for a short period of time. Appellant has completely failed to disclose any records such as business licenses and the like which would establish that he is in any business for which the site is a headquarters. To establish a right to land under the public land laws, the applicant is required to support

his assertions with evidence which is in his sole control. United States v. Block, 12 IBLA 393, 401-03, 80 I.D. 571, 575 (1973). 2/

As appellant has failed to make a satisfactorily prima facie showing of compliance with the law, especially that he or his employer has a business and appellant uses the site for a headquarters or homestead in relation thereto, his application to purchase was properly rejected and his claim canceled.

Criner has also alleged that he is entitled to his claim because several BLM employees told him it would be approved. The general rule is that no person can gain rights to public land based on the erroneous or unauthorized statements of a government employee. 43 CFR 1810.3; but see Brandt v. Hicke, 427 F.2d 53 (9th Cir. 1970). The general rule applies here. In addition, the advice by the BLM employees came after the statutory life of the claim expired and cannot be the basis for excusing compliance with previously required acts. Vernon L. Nash, supra at 336.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joseph W. Goss  
Administrative Judge

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2/ On April 24, 1969, BLM told Criner: "If you have additional information such as copies of business licenses, advertisements and accounting records showing the nature and source of your income from the business in connection with which the site is used and maintained, it should also be submitted as soon as possible." Despite being specifically told what kind of evidence to submit, Criner never produced any of the requested evidence.

